

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

LYONDELL CHEMICAL COMPANY,
et al.,

Debtors.

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MILLENNIUM HOLDINGS LLC,

Appellant,

MEMORANDUM OPINION

-against-

11 Civ. 163 (MGC)

AKZO NOBEL PAINTS, LLC,

Appellee.

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APPEARANCES:

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Cedarbaum, J.

Millennium Holdings LLC, a debtor affiliated with Lyondell Chemical Company, appeals from an order of the United States Bankruptcy Court, Robert E. Gerber, B.J., granting the motion of Azko Nobel Paints, LLC ("ANP") for an order compelling Millennium to assume or reject the Amended Purchase Agreement to which Millennium and ANP are parties. The Amended Purchase Agreement was created in a Settlement Agreement, which was executed in 2000 to resolve disputes which had arisen under the original 1986 Purchase Agreement. The Amended Purchase Agreement contains indemnification rights and obligations related to certain matters, including lead product liability and environmental liability.

The Bankruptcy Court, in granting ANP's motion, held that the indemnities in the Amended Purchase Agreement are not severable and that the Amended Purchase Agreement must therefore be assumed or rejected in its entirety. It also held that the Amended Purchase Agreement is an executory contract. In this appeal, Millennium argues that the lead product indemnification and the environmental indemnification are severable and that the Amended Purchase Agreement is not an executory contract.

After hearing extensive oral argument and carefully examining the briefs of both sides, I affirm the decision of Bankruptcy Judge Gerber on his thorough Findings of Fact and Conclusions of Law.

SO ORDERED.

Dated: New York, New York
February 18, 2011

S/_____
MIRIAM GOLDMAN CEDARBAUM
United States District Judge

CLOSE CASE